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No. 449

U.S. Supreme Court

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

DISTRICT OF COLUMBIA, *Petitioner*,

v.

VENSTONE STONE, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The District of Columbia, a municipal corporation, by its attorneys, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled cause on June 28, 1956.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (Appendix, *infra*, pp. 1A-28A) is reported at ..... U. S. App. D. C. ....., ... F. 2d ..... The opinion of the Municipal Court of Appeals for the District of Columbia (Appendix, *infra*, pp. 1B-4B) is reported at 112 A. 2d 499, and its order denying a motion for rehearing appears at Appendix, *infra*, p. 5B.

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JURISDICTION

The judgment of the Municipal Court of Appeals was entered on March 14, 1955 (Appendix, *infra,* p. 1B), and its order denying motion for rehearing was entered on April 5, 1955 and appears at Appendix, *infra,* p. 5B. The judgment of the United States Court of Appeals for the District of Columbia Circuit (Appendix, *infra,* p. 29A) was entered June 28, 1956. The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

An Act of Congress, approved February 28, 1933, 47 Stat. 1370, ch. 138 (Section 12-208, D. C. Code, 1951 Edition), provides that:

> "No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained, he, his agent, or attorney *gave notice in writing to the commissioners of the District of Columbia of the approximate time, place, cause, and circumstances of such injury or damage: Provided, however,* That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision." [Emphasis supplied]

Respondent sustained an injury on public space and, within six months thereafter, his attorney, in writing, notified the Corporation Counsel, but not the Commissioners, of the accident. The letter did not give the "approximate time" of the accident, it incorrectly designated the "place", and made no mention of the "cause and circumstances" of the accident.

Through some third person, the Metropolitan Police Department received a report of respondent's injuries. The report gave an "approximate time," but incorrectly desig-

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nated the "place," and made no mention of the "cause and circumstances" of the accident. The Circuit Court, Judge Prettyman dissenting, ruled that the above-quoted statute was thereby complied with.

In the view of the petitioner, the questions presented are:

1. Did not the United States Court of Appeals for the District of Columbia Circuit, by so ruling, infringe upon and usurp the function of the Congress?

2. Was not the petitioner, by such ruling, denied due process of law guaranteed to it by the Fifth Amendment to the Constitution?

3. Were the requisites prescribed by the Congress as conditions precedent to the maintenance of an action against the District of Columbia for unliquidated damages met by:

A. The letter to the Corporation Counsel? or

B. The report to the Metropolitan Police Department?

STATUTES INVOLVED

Act of Congress approved February 28, 1933, 47 Stat. 1370, ch. 138 (Section 12-208, D. C. Code, 1951 Edition):

> "No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained, he, his agent, or attorney gave *notice in writing to the commissioners of the District of Columbia of the approximate time, place, cause, and circumstances of such injury or damage: Provided, however,* That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision." [Emphasis supplied]

STATEMENT

The respondent commenced, in the Municipal Court for the District of Columbia, an action claiming damages for

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personal injuries sustained as the result of the alleged negligence of petitioner in maintaining a "manhole and cover" (Appendix, *infra*, pp. 1C-2C). The Municipal Court had jurisdiction under the Act of April 1, 1942, 56 Stat. 192 (Section 11-755, D. C. Code, 1951 Edition), because the amount in controversy did not exceed the sum of $3,000. The Municipal Court of Appeals for the District of Columbia had jurisdiction to review the judgment of the Municipal Court, under the provisions of Section 11-772, D. C. Code, 1951 Edition (Act of April 1, 1942, 56 Stat. 195). The United States Court of Appeals for this Circuit had jurisdiction to review the judgment of the Municipal Court of Appeals under Section 11-773, D. C. Code, 1951 Edition (Act of April 1, 1942, 56 Stat. 196).

Petitioner filed a motion for summary judgment (Appendix, *infra*, p. 2C) and, during the argument thereof, an excerpt from a police report (Appendix, *infra*, p. 3C) was read to the court by counsel. The motion was denied (Appendix, *infra*, p. 3C), there was a trial and a Municipal Court jury returned a verdict for respondent, upon which judgment was entered (Appendix, *infra*, p. 3C).

Petitioner appealed to the Municipal Court of Appeals for the District of Columbia contending that the trial court erred in refusing to direct a verdict in its favor since the record did not disclose compliance with the statutory requirements prescribed by Section 12-208, D. C. Code, 1951 Edition (*supra*, p. 3), as a condition precedent to the maintenance of the action for unliquidated damages against the petitioner.

The Municipal Court of Appeals observed that on April 30, 1953 respondent's attorney addressed a letter to the Corporation Counsel advising that respondent was injured "on April 15" in an accident at the northwest corner of Sixth and L Streets, S. E., that a report to the Metropolitan Police Department indicated that the injury had been sustained at the southeast corner (Appendix, *infra*, p. 2B),

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that in his complaint respondent alleged that his injury was sustained near the corner of Sixth and L Streets, S. E. (Appendix, *infra*, p. 2B), and that at the trial respondent's proof was that he sustained his injury when he stepped on the edge of a manhole cover at the northeast corner of Sixth and L Streets, S. E. (Appendix, *infra*, p. 2B). The Municipal Court of Appeals made the further observation from the record (Appendix, *infra*, p. 3B).

> "The intersection of 6th and L Streets, S. E., is not a typical four-corner intersection. Rather, it is different in that 6th Street, which runs north and south, upon meeting L Street, which runs east and west, does not continue directly north. In order to continue north on 6th Street it is necessary to proceed in an easterly direction on L Street approximately 200 feet. Thus the northeast and northwest corners of 6th and L Streets, S. E., are approximately 200 feet east of the southeast and southwest corners.
>
> "It appears from the record that there is more than one manhole cover at this intersection and that an agent of the District Government, in conducting his investigation, inspected a manhole cover other than the one on the northeast corner. * * * "

The Municipal Court of Appeals then reversed the judgment of the trial court on the authority of *McDonald* v. *District of Columbia*, 95 U. S. App. D. C. 305, 221 F. 2d 860, which held that inaccuracies respecting the place of an injury contained in a written notice seasonably sent to the Commissioners of the District of Columbia were not cured by subsequent corrections conveyed to an Assistant Corporation Counsel to whom the original notice had been referred.

The United States Court of Appeals for the District of Columbia Circuit allowed an appeal and, after oral argument before a three-judge division of the court but before

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decision, set the case down for rehearing *en banc* "because the court wished to reconsider its ruling in *McDonald*" (Appendix, *infra*, p. 3A).

The primary question considered by the Circuit Court of Appeals *en banc*,[1] however, was whether the requirement of written notice of claim prescribed by Section 12-208, D. C. Code, 1951 Edition, was satisfied either by a letter addressed to the Corporation Counsel,[2] which gave an incorrect corner of an intersection as the location of the accident, or by a police report (Appendix, *infra*, p. 4A) based upon information transmitted through some third person that the accident occurred at a different, but still incorrect, corner of the intersection (Appendix, *infra*, p. 5A).

The court, speaking through Washington, Circuit Judge, with Miller and Bastian, Circuit Judges, joining in the opinion, held, in reversing, that, for the purposes of Code Section 12-208, *supra*, a written notice of claim addressed to the Corporation Counsel, if otherwise adequate, is equivalent to written notice to the Commissioners. The reason assigned for this ruling was that the Congress had provided by Section 1-301, D. C. Code, 1951 Edition, that the Corporation Counsel "shall * * * have charge and conduct of all law business of the said District and all suits instituted by and against the Government thereof."

Although such written notice to the Corporation Counsel contained no statement as to the "approximate time," the "cause" or "circumstances" of the injury and gave an incorrect description of the "place" of such injury, the court concluded that the notice was adequate.

The opinion held also that the police report (Appendix, *infra*, p. 5A) which was based upon information originating with respondent but transmitted through some third person and which, like the written notice to the Corporation Coun-

[1] The Circuit Court then consisted of eight judges.

[2] The written notice was never a part of the record, but by an amendment to the pretrial order it was stipulated that under date of April 30, 1953, respondent's attorney addressed a letter to the Corporation Counsel advising that respondent "was injured April 15, at the northwest corner of Sixth and L Streets, S. E."

sel, contained an incorrect description of the place of the injury and no statement as to the "cause" and "circumstances" of such injury was nevertheless "sufficient notice for the purposes of the proviso to Section 12-208, *supra*" (Appendix, *infra*, p. 5A), even though it was never introduced in evidence.

Although only three judges joined in the opinion, Judges Edgerton and Fahy concurred in the reversal of the judgment of the Municipal Court of Appeals. Judges Edgerton and Bazelon, however, agreed that *McDonald* v. *District of Columbia*, 95 U. S. App. D. C. 305, 221 F. 2d 860, *supra*, should be overruled insofar as it holds that notice of claim must be given to the Commissioners of the District of Columbia as a condition precedent to the maintenance of an action against the District of Columbia for unliquidated damages and that an otherwise adequate notice addressed to the Corporation Counsel is not sufficient.

Circuit Judge Bazelon filed a separate opinion. While concurring in the view that *McDonald* should be overruled, he was of the opinion that the appeal should have been dismissed as improvidently granted, because it "cannot be concluded from this record, * * * that the District had, either from Stone or from other sources, the notice prescribed by the statute" (Appendix, *infra*, p. 7A).

In this connection Judge Bazelon pointed out (Appendix, *infra*, p. 6A) that in the complaint it was alleged that respondent notified the Commissioners of the District of Columbia in writing, within the six months' statutory period, whereas all that appeared from the record was a stipulation in an amended pretrial order that a letter was addressed to the Corporation Counsel under date of April 30, 1953, advising that the respondent "was injured April 15 at the northwest corner of Sixth and L Streets, Southeast."

Further, Judge Bazelon noted (Appendix, *infra*, p. 8A) that the police report was not mentioned in the complaint and that, aside from the fragmentary excerpt therefrom

which described a different but incorrect place of the accident, there was no evidence pertaining to it in the record.

In a dissenting opinion (Appendix, *infra*, pp. 9A-12A) Circuit Judge Danaher concurred with the view of Judge Bazelon that the record failed to disclose proof of notice of claim prescribed by Section 12-208, *supra*, and that the appeal should have been dismissed, but sharply disagreed with the opinion of Judge Washington and with the overruling of *McDonald*.

In a very strongly-worded dissenting opinion, Judge Prettyman concurred in the opinion of Judge Danaher (Appendix, *infra*, p. 12A), and concluded that *McDonald* was correctly decided originally and that the Municipal Court of Appeals correctly decided *Stone*. Judge Danaher joined in this conclusion. Judge Prettyman reviewed reported cases decided by courts of last resort in approximately 30 states in which notice statutes similar to Section 12-208, D. C. Code, 1951 Edition, *supra*, were construed. He then concluded that:

> "In our opinion this notice, as we have it on this record, was defective in every important respect in the substance of what the statute required. The court holds such a notice to be valid in this jurisdiction. No other court decision that we have been able to find would support such a holding on such a notice." (Appendix, *infra*, p. 28A)

REASONS FOR GRANTING THE WRIT

The decision of the majority of the court below in effect repeals the Act of Congress[3] which prescribed

[3] Section 12-208, D. C. Code, 1951 Edition:
"No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained, he, his agent, or attorney gave notice in writing to the commissioners ofthe District of Columbia of the approximate time, place, cause, and circumstances of such injury or damage: *Provided, however*, That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision. (Feb. 28, 1933, 47 Stat. 1370, ch. 138.)"

the conditions under which an action may be maintained against the District of Columbia for unliquidated damages. It accomplishes that result by holding that the plain and simple yet definite requirements prescribed by the Congress are nothing more than idle formalities which, in the absence of some showing by the petitioner of prejudice, may be disregarded.

Under the basic and fundamental doctrine of separation of powers, courts are forbidden to encroach upon or to interfere with the legitimate exercise of the legislative function. Consequently, a court may not substitute its judgment for that of the legislature as to matters within the discretion of the legislature; nor may it re-write a statute in accordance with its own notions. The function of the court is to declare the law as it finds it and to construe the law as it is. It follows that equitable considerations may not be regarded as controlling so as to relieve a person from failure to comply with a statute. 16 C. J. S. "Constitutional Law" § 151, pp. 721-725; see also *Dixie Margarine Company* v. *Shaefer*, 139 F. 2d 221, cert. den. 321 U. S. 791, 88 L. Ed. 1081.

It is not for the courts to tamper with the words of a statute or by a strained construction of legislative enactments, of which the language is clear and explicit, to accomplish results not contemplated by the Congress which enacted it. *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S. 1, 15 S. Ct. 508, 39 L. Ed. 601. This being so, if the judiciary so tamper with a legislative enactment as to deprive a party litigant of a substantive right or a defense which the legislature has provided in specific language, there can be no doubt that the litigant has been deprived of the due process of law guaranteed him by the Fifth Amendment.

In his dissenting opinion, Judge Prettyman characterized the action of the majority of the court as follows:

> "In its present opinion *this court is enacting a new statute.* We think the court has no power

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to do so and, even if it had power, it should not do so. The court makes two fundamental changes in the requirements made by Congress. First, it selects the Corporation Counsel as the official to receive these notices. It does so because he has charge of all law business and suits instituted against the District Government. * * * *The court disagrees with the Congress, and so the court changes the statute.*

* * * * * * * * * *

"The second fundamental change made in the statute by the court is in substituting a general doctrine of equity, non-prejudice, and acquired knowledge for plain and specific requirements. * * * We are not sure that the court requires any written notice. Certainly, instead of treating the notice provision as mandatory, as the other courts of the country do, it treats it as a procedural incident.

"To our minds the opinion of the court is a complete rewriting of the plain and simple requirements of the statute. * * *" (Appendix, *infra*, p. 14A). [Emphasis supplied]

The statute reflects the policy adopted by the Congress in the exercise of its plenary and exclusive power to legislate for the District of Columbia. Even if Section 12-208, *supra*, was not such a plain statute the court below should have done nothing more than to interpret the statute. Certainly the court had no power to overrule the congressional policy, nor should the court have sat in judgment on the merits or wisdom of the legislation. It may well be that the decision of the court is a manifestation of wisdom greater than the collective wisdom of the Congress, but the policy of the Congress had been established and, by attempting to change it, the court usurped the legislative function. *Hilton* v. *Sullivan*, 334 U. S. 323, 339; *Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U. S. 604, 618-619.

In *United States* v. *Hutcheson,* 312 U. S. 219, 235, this Court said:

> " * **The appropriate way to read legislation in a situation like the one before us, was indicated by Mr. Justice Holmes on circuit: 'A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur in the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before.' "

The opinion of the majority is based upon a novel and unprecedented construction of language in the statute which is so clear and unambiguous as to require no construction. But more than this, it establishes a concept of municipal liability in tort which is in direct conflict with the expressed intent of the Congress.

The tremendous importance of this case to the District of Columbia is best demonstrated by the fact that the Court of Appeals for the District of Columbia in 1932 was impelled by the vulnerability of the District, as are all municipalities, to manufactured claims, to suggest the enactment of the very statute which the United States Court of Appeals for the District of Columbia Circuit has by the majority opinion herein completely nullified. *District of Columbia* v. *Leys,* on rehearing, 62 App. D. C. 3, 5, 63 F. 2d 646, 648, *post* page 18.

Specifically, and notwithstanding the clear and unambiguous language employed in Section 12-208, *supra,* a majority of the court below held:

1. That written notice of claim to the Corporation Counsel, if otherwise adequate, satisfies the unequivocal statutory requirement of written notice to the Commissioners of the District of Columbia.

2. That such written notice of claim is adequate even though it does not give the "approximate time", incorrectly designates the "place", and does not mention the "cause and circumstances" of the injury.

3. That a police report based upon information emanating from a claimant but furnished to the Metropolitan Police Department through some third person is sufficient notice of claim for the purposes of the proviso in the statute, even though, in this case, such report was not introduced in evidence, was not a part of the record, and the excerpt therefrom (Appendix, *infra*, p. 3C) contained an incorrect designation of "place" and did not mention the "cause and circumstances" of any injury.

For these reasons and others which will be demonstrated, the decision should be reviewed by this Court.

ARGUMENT

I

The letter addressed to the Corporation Counsel did not satisfy the requirements of the statute.

The respondent alleged in his complaint (Appendix, *infra*, p. 1C) that he gave the Commissioners of the District of Columbia written notice of his claim. What appears from the record in this connection is a stipulation in an amended pretrial statement to the effect that under date of April 30, 1953, respondent's attorney addressed a letter to the Corporation Counsel advising that "* * * plaintiff was injured April 15, at the northwest corner of sixth and L Streets, southeast." (Appendix, *infra*, p. 6A).

A majority of the court below held that such a letter to the Corporation Counsel, if otherwise adequate, was suffi-

cient to satisfy the requirements of the statute. In support of this ruling the court below said the notice of claim required by the statute relates to potential suits against the District of Columbia and that such notices are transmitted to the Corporation Counsel as a matter of course. The court reasoned from this that a notice of claim against the District of Columbia is "law business" for the purposes of Section 1-301, D. C. Code, 1951 Edition, which provides:

> "The corporation counsel shall be under the direction of the Commissioners, and have charge and conduct of all law business of the said District, and all suits instituted by and against the government thereof. He shall furnish opinions in writing to the Commissioners, whenever requested to do so. All requests for opinions shall be transmitted through the Commissioners, and a record thereof kept, with the opinions, in the office of the secretary of the Board of Commissioners. He shall perform such other professional duties as may be required of him by the Commissioners. (Leg. Assem. Aug. 23, 1871, ch. 108, § 18; June 20, 1874, 18 Stat. 116, ch. 337, § 2; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)"

It is, of course, true that claims against the District of Columbia often result in lawsuits, but it is well established law that, without more, neither the receipt of notice of claim nor the investigation, processing, or adjustment of claims is necessarily "law business." See *American Automobile Association* v. *Merrick*, 73 App. D. C. 151, 153, 117 F. 2d 23, modifying *American Automobile Association* v. *Merrick*, 31 F. Supp. 876. See also *Liberty Mutual Insurance Co.* v. *Jones*, 130 S. W. 2d 945, 955-961, 125 A. L. R. 1149, 1171.

From this it follows that no claim against the District of Columbia for unliquidated damages can be considered "law

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business" for the purposes of Section 1-301, D. C. Code, 1951 Edition, until referred to the Corporation Counsel by the Commissioners of the District.

Reason and principle support this view. Reference to Sections 1-902 - 1-905, D. C. Code, 1951, and Section 1-906, D. C. Code, 1951, Supp. IV, shows that Congress specifically reposed in the Commissioners the authority both to settle claims against the District and to compromise claims which the District has against others.

Since all appropriations of public revenues for the settlement of claims must be expended under the direction of the Commissioners, it was reasonable and sensible for the Congress to provide that " * * * no action shall be maintained against the District of Columbia for unliquidated damages * * * unless the claimant * * * gave notice in writing to the Commissioners * * *."

II

The notice of claim did not otherwise meet the requirements of the statute because: It did not give the "approximate time", it incorrectly designated the "place", and it did not state the "cause and circumstances" of the injury.

The letter addressed to the Corporation Counsel (Appendix, *infra*, p. 6A) did not give the "approximate time", it incorrectly designated the "place", and it made no mention of the "cause and circumstances" of the injury or damage. The majority of the court below, however, decided that the letter was adequate and sufficient to meet the requirements of Section 12-208, D. C. Code, 1951 Edition, *supra*.

The court apparently based its ruling solely on the fact that, within two months after the accident, petitioner made photographs and interviewed witnesses. In this connection the court said " * * * had the report * * * merely referred to 6th and L Streets, S. E., without reference to a specific

corner we think the notice would have been beyond question." (Appendix, *infra*, p. 5A).

But as Judge Bazelon pointed out (Appendix, *infra*, p. 7A) there is nothing in the record to show that petitioner was aware at the time the photographs were taken or at any time within the six months period that the accident occurred at any place other than the northwest corner of the intersection as stated in the letter to the Corporation Counsel.

The vice of the court's ruling, however, was perhaps best demonstrated by Judge Prettyman's comment respecting the deficiencies in the notice. Said Judge Prettyman in his dissenting opinion:

> "Our statute requires that the notice state 'the approximate time, place, cause, and circumstances of such injury or damage.' This notice, as we have it before us, did not state any circumstances—whether claimant was walking or driving, whether he was hit by a truck, fell into a hole, slipped on a wet spot, fell over a barrier, or tripped on a sidewalk defect, whether the sidewalk or the parking or the street was torn up, or any other circumstance whatever. The notice does not describe any injury or damage. It does not say whether claimant bumped his head, broke his leg, injured his back, or merely cut his finger. It does not give any cause of the injury—whether a defect in a sidewalk, a defective manhole cover, negligent driving of a city truck, loose stones, improper lighting over repair work, or any other cause whatever. The notice does not give any approximate time—either an hour or whether morning, afternoon, evening or nighttime; it gives only a date. It does not give an approximate place (even assuming the statute requires only the 'approximate' place, a disputed point). It gives only a corner at an intersection, and an irregular intersection at that, but not whether on the sidewalk, in the street, on a crosswalk, or in a tree space. The

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Since all appropriations of public revenues for the settlement of claims must be expended under the direction of the Commissioners, it was reasonable and sensible for the Congress to provide that " * * * no action shall be maintained against the District of Columbia for unliquidated damages * * * unless the claimant * * * gave notice in writing to the Commissioners * * *."

II

The notice of claim did not otherwise meet the requirements of the statute because: It did not give the "approximate time", it incorrectly designated the "place", and it did not state the "cause and circumstances" of the injury.

The letter addressed to the Corporation Counsel (Appendix, *infra,* p. 6A) did not give the ''approximate time'', it incorrectly designated the ''place'', and it made no mention of the ''cause and circumstances'' of the injury or damage. The majority of the court below, however, decided that the letter was adequate and sufficient to meet the requirements of Section 12-208, D. C. Code, 1951 Edition, *supra.*

The court apparently based its ruling solely on the fact that, within two months after the accident, petitioner made photographs and interviewed witnesses. In this connection the court said " * * * had the report * * * merely referred to 6th and L Streets, S. E., without reference to a specific

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But as Judge Bazelon pointed out (Appendix, *infra*, p. 7A) there is nothing in the record to show that petitioner was aware at the time the photographs were taken or at any time within the six months period that the accident occurred at any place other than the northwest corner of the intersection as stated in the letter to the Corporation Counsel.

The vice of the court's ruling, however, was perhaps best demonstrated by Judge Prettyman's comment respecting the deficiencies in the notice. Said Judge Prettyman in his dissenting opinion:

> "Our statute requires that the notice state 'the approximate time, place, cause, and circumstances of such injury or damage.' This notice, as we have it before us, did not state any circumstances—whether claimant was walking or driving, whether he was hit by a truck, fell into a hole, slipped on a wet spot, fell over a barrier, or tripped on a sidewalk defect, whether the sidewalk or the parking or the street was torn up, or any other circumstance whatever. The notice does not describe any injury or damage. It does not say whether claimant bumped his head, broke his leg, injured his back, or merely cut his finger. It does not give any cause of the injury—whether a defect in a sidewalk, a defective manhole cover, negligent driving of a city truck, loose stones, improper lighting over repair work, or any other cause whatever. The notice does not give any approximate time—either an hour or whether morning, afternoon, evening or nighttime; it gives only a date. It does not give an approximate place (even assuming the statute requires only the 'approximate' place, a disputed point). It gives only a corner at an intersection, and an irregular intersection at that, but not whether on the sidewalk, in the street, on a crosswalk, or in a tree space. The

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corner of Sixth and L Streets, S. E., is not a square, four-corner intersection. It is an irregular intersection, at which Sixth Street, going north, comes to a dead end at L Street, then shifts to the east some 200 feet, and there resumes its way north. Even such location as was given in the notice was not correct; the notice said the northwest corner, whereas the proof was the northeast corner.

"*In our opinion this notice, as we have it on this record, was defective in every important respect in the substance of what the statute required. The court holds such a notice to be valid in this jurisdiction. No other court decision that we have been able to find would support such a holding on such a notice.*" (Apendix, *infra*, p. 27A-28A) [Emphasis supplied]

III

The police report did not constitute notice of claim under the proviso in the statute.

The majority of the court below committed perhaps its most greivous error when it held (Appendix, *infra*, p. 5A) that a police report, only an excerpt from which is in the record (Appendix, *infra*, p. 3C), constituted sufficient notice of claim for the purposes of the proviso in § 12-208, D. C. Code, 1951 Edition, *supra*, which reads:

> "* * * That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision."

There is nothing in the record to show that at the trial respondent relied upon any police report to establish notice of claim. In fact, the police report was not even mentioned in the complaint (Appendix, *infra*, p. 1C) and no evidence pertaining to it was introduced. The only mention of a police report was made before trial during oral argument

on the unsuccessful motion for summary judgment when an excerpt [4] from it was read to the court.

Moreover, even a casual examination of the part of the report in the record (Appendix, *infra*, p. 3C) is sufficient to disclose its deficiencies. While it gives an "approximate time", it makes no mention of any injury or damage or the "cause" or "circumstances" of any injury or damage. The abbreviated report does designate a "place", the southeast corner of the intersection, but it was thereafter established that the designation of place was incorrect and that the accident really occurred at the northeast corner of the intersection.

The majority of the court below, although conceding that the "report" was not based upon the personal knowledge of any police officer or upon information obtained as the result of investigation, held (Appendix, *infra*, p. 5A) that it was "prepared in the regular course of duty" of a police officer and therefore constituted notice of claim for purposes of the proviso.

The report in question when tested by the provisions of § 4-134, D. C. Code, 1951 Edition, Supp. IV, falls far short of meeting the standards of a report "* * * by the Metropolitan police department made in the regular course of duty." But whatever view may be taken respecting the sufficiency of the report under that section, it is crystal clear that it failed as utterly as did the letter addressed to the Corporation Counsel to satisfy the requirements of Section 12-208 of the Code.

ADDITIONAL REASONS FOR GRANTING THE WRIT

The decision of the majority of the court below was not supported by a single citation of authority. Petitioner submits that the reason for this is that there is no authority

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[4] "* * * Venstone Stone, colored, thirty-one (31) years of age, 630 'M' Street, S. E., reports at about 6:35 a. m. on April 15, 1953, while walking on the sidewalk on the southeast corner of 6th and L Streets, S. E. * * *"

supporting the decision. Judge Prettyman made this clear in his vigorous dissenting opinion (Appendix, *infra*, pp. 12A-28A).

Some thirty or more states have statutes similar to Section 12-208, D. C. Code, 1951 Edition, and questions similar to that presented to the court below have been considered and disposed of by courts of last resort in such states. But insofar as petitioner has been able to ascertain from an examination of reported cases, no court of last resort has ever sustained any such notice of claim as that presented by this record.

The importance of this case to petitioner can be best demonstrated when viewed against the background of the municipal structure which is the government of the District of Columbia. The District of Columbia, like other large municipalities, has many departments, divisions, and agencies whose functions touch at vital points the personal and property rights, not only of local residents, but also of the thousands of visitors who come here from time to time.

The functions of the municipal government are performed in offices scattered all over the District of Columbia proper and the metropolitan area extending into Maryland and Virginia. Its offices and shops are manned by thousands of officers and employees upon whom rests responsibility for the performance of the numerous municipal and governmental functions.

In excess of 1500 motor vehicles are operated daily in the performance of such functions which include the construction and maintenance of some 3,000 miles of streets, sidewalks and alleys, the construction and maintenance of sewers and watermains, the conduct of a hospital, the operation of many clinics, schools, and correctional institutions, the furnishing of police and fire protection, of a sanitation department and of other departments concerned with public safety, health and welfare.

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Injuries to person and damage to property frequently arise out of the performance of such functions and claims and lawsuits follow almost as an inevitable consequence.

The case of *District of Columbia* v. *Leys*, 62 App. D. C. 3, 5, 63 F. 2d 646, which was decided prior to the enactment of the notice statute embodied in Section 12-208, D. C. Code, 1951 Edition, *supra*, is illustrative of the difficulties encountered by the municipal authorities in the disposition of lawsuits arising out of injuries sustained on public space. There the plaintiff alleged that she had fallen at one location and was permitted by the court to amend her declaration so as to charge that she fell at an entirely different location. The record of the case shows that, at trial, a third location was substituted. The plaintiff recovered judgment and the court below affirmed. On rehearing, it was said at page 5:

> "* * * But our consideration of this cause indicates that the District of Columbia was hampered in its defense by the lapse of time between the injury and the suit, during which no claim was made or notice given of the alleged injury.
>
> "This course, whether inadvertent or designed, was open to the claimant in the present state of the law, which leads us to suggest again, as we did at the hearing, a change in the statute of limitations applicable to such cases, or the enactment of a requirement that one alleging himself to be injured as a result of a defective highway or sidewalk must make a sworn complaint thereabout to the District government within some short but reasonable period, in default of which any legal action thereupon shall be barred.
>
> "Such a requirement would not only enable the District of Columbia to deal with the complaint and prepare its defense while the matter is fresh and evidence available, but also to safeguard other persons from possible injury by remedying the defective conditions, if any were found to exist.

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"Provisions of this character appear to be included in a bill recently introduced into the House of Representatives by Mrs. Norton, and are to be found in city charters in Virginia and elsewhere."

The bill to which the Court of Appeals referred was H. R. 13750, 72d Congress, 2d Session. The bill was approved as the Act of February 28, 1933, 47 Stat. 1370, and appears as Section 12-208, D. C. Code, 1951 Edition, above.

That Congress intended that all such claims and lawsuits should be disposed of in a manner consistent with the public interest is clear from the language employed in Section 12-208 of the Code and its legislative history. The latter is particularly illuminating. In the report of the House District Committee (Report No. 2010, 72d Congress, 2d Session) it was said:

"The purpose of the bill is to protect the District of Columbia against unreasonable claims and to assist it in the defense of the public interest where claims are made within the 3-year statute of limitations but so long after the event that it is impossible for the District of Columbia to obtain evidence for use in litigation which may result.

"Numerous instances were recited to the committee in which notice of injury as a result of alleged defective sidewalks, or other conditions, were brought to the attention of the commissioners by a filing of a suit for damages more than two years after the alleged injury occurred. During the intervening period the sidewalk may have been entirely replaced. Witnesses to the accident had moved and could not be located and the circumstances surrounding the injury had become a matter entirely within the knowledge of the plaintiff.

* * * * * * * * *

"* * * It was thought also that an approximate estimate of the time of the accident should be suffi-

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cient and the word 'approximate' was therefore inserted in the bill. *Witnesses appearing for the District stated that a general description of the place would be inadequate as the actual conditions at the particular place must be inspected so the word 'place' was left as in the original draft of the bill.* The proviso added takes care of those instances in which actual notice is had by the District of Columbia from the police department, although technical notice may not have been filed by the person injured.

"*The committee is definitely of the opinion that this legislation is essential to protect the revenues of the District of Columbia from unreasonable suits and that with the amendments offered adequate protection of the rights of individuals is secured and the bill should pass.*" [Emphasis supplied]

It is unthinkable that the Congress, in selecting and designating the Commissioners of the District of Columbia as the officials to receive notice of claim, was not aware of what it was doing or that it did not intend that the procedure it prescribed should be followed.

The whole pattern of legislation on this general subject evidences the concern of the Congress that all claims for injury to person or damage to property be disposed of in a manner consistent with the public interest. See in this connection Sections 1-902 and 1-903, D. C. Code, 1951 Edition.

CONCLUSION

Congress, therefore, did not do a senseless thing when it prescribed plain and simple requirements as conditions precedent to the maintenance of any action against the District of Columbia for unliquidated damages.

Manifestly, therefore, the decision of the majority of the court below constitutes an unwarranted encroachment on the legislative function and, unless reversed, the clear purpose of the Congress will be defeated.

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In view of the foregoing, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

18 UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,638

VENSTONE STONE, APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.

Appeal from the Municipal Court of Appeals
for the District of Columbia

On Rehearing in banc

Decided June 28, 1956

* * * * * * * * * *

Before EDGERTON, Chief Judge, and PRETTYMAN, WILBUR K. MILLER, BAZELON, FAHY, WASHINGTON, DANAHER and BASTIAN, Circuit Judges, sitting *en banc*. (Circuit Judge BURGER took office after this case was heard and took no part in its consideration and decision.)

WASHINGTON, *Circuit Judge*, announced the judgment of the court and filed the following opinion, in which WILBUR K. MILLER and BASTIAN, *Circuit Judges*, join:

* * * * * * * * * *

19 This is a damage suit against the District of Columbia, in which the central question is whether the statutory requirement as to notice of claim has been met.

Plaintiff-appellant tripped and fell, injuring his ankle, while rounding the northeast corner of Sixth and L Streets, S. E. He brought this action in the Municipal Court against the District of Columbia on the ground that the accident was caused by the District's negligent maintenance of a manhole and cover at that corner, it being alleged that because of this negligent maintenance the manhole edge and cover protruded from the ground and caused plaintiff's fall. The District moved for summary judgment on the ground that the notice requirement established by Section 12-208, D. C. Code (1951),[1] had not been complied with. During the argument of this motion, two bases of compliance were suggested to the trial court, a letter to the Corporation Counsel by appellant's attorney, and a police report. Each occurred within the statutory period, but each named a different (and incorrect) corner of the intersection at which the accident occurred.[2] The police report, an excerpt from which was read to the trial court by counsel for appellee, on its face is based on a statement by Stone, though perhaps Stone's statement was transmitted to the police
20 by some third person. Despite the errors in the two reports, the District located the correct corner,

[1] Section 12-208 provides: "No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained, he, his agent, or attorney gave notice in writing to the commissioners of the District of Columbia of the approximate time, place, cause, and circumstances of such injury or damage: *Provided, however,* That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision."

[2] The letter specified the northwest corner, and the report the southeast corner. Actually, as it later appeared, the accident happened on the northeast corner.

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witnesses to the accident, and the offending manhole within six months of the accident.[3]

The Municipal Court denied the District's motion for summary judgment, and, after a jury trial, appellant won a judgment. The Municipal Court of Appeals reversed. 112 A. 2d 499 (1955). It did so on the strength of *McDonald* v. *District of Columbia,* 95 U. S. App. D. C. 305, 221 F. 2d 860 (1955), where this court held that inaccuracies in a written notice seasonably sent to the Commissioners were not cured by subsequent but still seasonable corrections conveyed to an assistant in the office of the Corporation Counsel (to whom the Commissioners had referred the original notice) and to the District's Inspector of Claims. Dismissal for failure to comply with the statute was upheld by this court on the theory that the correction should have been sent to the Commissioners themselves instead of their subordinates, although the District conceded its defense to the claim had not been prejudiced.

In the present case we permitted an appeal, and, after oral argument before a three-judge panel, set the case for rehearing *en banc* because the court wished to reconsider its ruling in *McDonald.*

We turn first to the notice by plaintiff's attorney to the Corporation Counsel. Section 1-301 of the D. C. Code (1951) says that the Corporation Counsel "shall . . . have charge and conduct of all law business of the said District, and all suits instituted by and against the government thereof." The notice required by Section 12-208 of the D. C. Code (1951) is clearly related to potential suits against the District, and as can be seen from Judge Bastian's dissent in *McDonald* v. *District of Co-*
21 *lumbia, supra,* 95 U. S. App. D. C. at 306-07, 221 F. 2d at 861-62, notice to the Commissioners is nor-

[3] Appellant's tender of proof that repairs had been effected within that time was rejected as a result of the District's objection.

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mally transmitted as a matter of course to the Corporation Counsel. In our view, the opinion in *McDonald* misconceives the purpose of the statutory notice, which is to give the District timely information concerning a claim against it, so it may adequately prepare its defense.[4] To insist that the notice must be addressed to the Commissioners, and to rule out as insufficient a notice addressed to their Counsel, to whom Congress has delegated the responsibility for defending the District against suit, seems to us most unreasonable. Congress could hardly have intended that failure to observe such an idle formality should cause a claimant to be denied his day in court. We think, therefore, that the *McDonald* case should be overruled on that point. We conclude that Section 1-301 of the Code makes notice to the Corporation Counsel, if otherwise adequate, equivalent to notice to the Commissioners for the purposes of Section 12-208.

In the instant case, we think the notice was otherwise adequate. Within two months after the accident, the District had interviewed the witnesses to the accident and taken pictures of the site. These events show that there was no prejudice to the District from plaintiff's error. It may, of course, be true that the letter from plaintiff's counsel to the Corporation Counsel bore no casual relationship to these events. But Section 12-208 of the D. C. Code (1951) contains no such requirement. A notice would, for example, suffice if given within the six
22 months period though the District had completed preparation of its case and repaired the spot before receipt of the notice. In a case such as the instant one, in which the right site was discovered and there is no

[4] The fact that a report in writing by the police department constitutes sufficient notice under D.C. CODE § 12-208 demonstrates that other purposes which a notice statute might have, such as providing the equivalent of taking plaintiff's depostion, are not emphasized in the District statute. Similarly, the availability of the alternate form of notice shows a congressional intent to permit flexibility in the administration of the notice requirement.

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assertion that plaintiff deliberately sought to mislead the District, notice fully complies with the purpose of the statute when it pin-points the locale with sufficient accuracy so that an investigation starting from the notice could reasonably be expected to uncover the available information. Such, on the face of the record, was this case. If—despite determination of the right spot and location of the witnesses—the District wished to claim prejudice, it was up to the District to make a record on that point. Had the report filed by plaintiff's counsel merely referred to 6th and L Streets, S. E., without reference to a specific corner, we think the notice would have been beyond question. The inclusion of additional specificity—though erroneous—should not defeat the notice in the absence of a showing of prejudice.

We turn to the police report, which appellant says constitutes "sufficient notice" under the proviso appended to Section 12-208. We agree, since we find no support in the statute for applying a stricter standard to that report than we have set out above for a notice from plaintiff. It is true that in the instant case the report by the police was not based on first hand observation but on a report to the police originating with appellant. But the statute contains no requirement of observation or on-the-site investigation. It seems obvious that the reference to a police report is included because Congress did not wish to cut off a plaintiff for lack of notice when the officials of the District had received from the Police Department a report of the episode prepared "in regular course of duty." The extent of the investigation by the police should not be the measure of the plaintiff's rights. The report in this case was adequate for purposes of the proviso.

23 Judges EDGERTON and FAHY agree that we should reverse the judgment of the Municipal Court of Appeals. Accordingly the judgment is reversed.

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Judges EDGERTON and BAZELON agree that so far as *McDonald* holds that notice must be sent directly to the Commissioners and that an otherwise adequate notice addressed to the Corporation Counsel is not sufficient, *McDonald* is erroneous. On that point *McDonald* is overruled.

So ordered.

BAZELON, *Circuit Judge,* is of the view that the appeal should be dismissed as having been improvidently granted, for the following reasons: We granted Stone's petition for allowance of an appeal in order to review the effect of our decision in *McDonald.* After the appeal was heard by a panel of this court, a rehearing in banc was ordered, *sua sponte,* because a majority of this court thought reconsideration of *McDonald* desirable and that this case presented questions appropriate for that purpose. But I now think, upon further study after the rehearing, that the record before us is unsatisfactory for that purpose.

The complaint alleged that "plaintiff notified the Commissioners of the District of Columbia in writing" within six months after the accident. All that appears in the record concerning such notice is the following stipulation in an amended pre-trial order:

> "The District of Columbia received a letter from Foster Wood, attorney for plaintiff, addressed to the 'Corporation Council' under date of April 30, 1953, setting forth that the plaintiff was injured April 15, at the *northwest* corner of sixth and L Streets southeast." [Emphasis supplied.]

The evidence at the trial disclosed that the accident occurred on the *northeast* rather than the *northwest*
24 corner of the intersection. There was no evidence

that appellant corrected the discrepancy within the six months' period, either orally or in writing.

It is true that at the trial, which was held long after the six months' period expired, a District investigator identified a photograph he had taken at the northeast corner about six weeks after the accident. But the record does not make clear that the District authorities were aware, when the photograph was taken, or at any time within the six months' period, that the photograph showed the correct corner. Consequently we have no assurance that the District was not prejudiced or hampered in handling and defending against Stone's claim, so that it might be said that the mistake in the original notice was cured.[1] It cannot be concluded from this record, therefore, that the District had, either from Stone or from other sources, the notice prescribed by the statute.

Thus, in my view, we do not reach the question whether the statutory requirement for "written notice to the Commissioners of the District of Columbia" is satisfied by a letter sent to the Corporation Counsel. But since a majority of the court has decided to reverse the judgment of the Municipal Court of Appeals and three judges are announcing an opinion that deals with the question just stated, I think I should express my view regarding it. Cf. Mr. Justice Frankfurter's separate opinion in *Armstrong* v. *Armstrong*, 350 U.S. 568, 572 (1956). So far as *McDonald* holds that notice must be sent directly to the Commissioners, and that an otherwise adequate notice addressed to the Corporation Counsel is not sufficient, I think *McDonald* is erroneous. I am in

[1] ". . . The purpose of the bill is to give the District officials reasonable notice of the accident so that the facts may be ascertained and, if possible, the claim adjusted." H.R.REP. No. 2010, 72d Cong., 2d Sess. 2 (1933). See also 17 MCQUILLIN, MUNICIPAL CORPORATIONS § 48.02 (3d ed. 1950).

The District does not concede here, as it did in McDonald, that it was not prejudiced or hampered. See also *Hurd* v. *District of Columbia*, 106 A.2d 702, 704 (Munic.Ct.App. 1954).

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agreement, to that extent, with Judge Washington's opinion in this case.

As to the police report, it was not referred to in the complaint and there is no evidence concerning it in the record. The existence of such a report and a fragmentary excerpt therefrom were merely referred to by the parties in oral argument before the trial court. The excerpt indicates that the report also included a wrong corner of Sixth and L Streets, as the place of accident.[2] Even if we implied from these references that the parties stipulated to the existence of such a report describing the wrong corner of the intersection, the record would still be inadequate for our purposes.

The proviso directs that a police report "shall be regarded as sufficient notice." It does not expressly incorporate the requirements of the statute's forepart for information concerning the "time, place, cause and circumstances" of the accident. At first blush, it would seem to follow that the mere existence of a police report establishes notice, without regard to its scope, accuracy and source of information, or the circumstances surrounding its preparation. But I think this plainly inconsistent with the statute's purpose of assuring adequate information for the proper and efficient disposition of claims by the District. Congress undoubtedly assumed that such information would be found in a report by trained police personnel. But clearly this assumption cannot be extended to a report which, for an extreme example, merely reflects an inaccurate oral description relayed by the claimant to the police five months after the accident. Hence we cannot determine whether the report is one that falls within the reasonable contempla-

[2] Counsel for the District read this excerpt to the trial court in the course of oral argument:

"Veston [sic] Stone, colored, 31 years, of 630 M Street, S.E., reports at about 6:35 a.m., April 15, 1953, while walking on the sidewalk on the S.E. corner of Sixth and L Streets, S.E. . . ."

tion of the statute's proviso, without at least knowledge of the full report, No such report is before us in the present case.

Since the record is inadequate for the purpose for which we granted this petition for allowance of an appeal and thereafter ordered a rehearing in banc, the appeal should have been dismissed as having been improvidently granted.

DANAHER, *Circuit Judge, dissenting:* Judge Bazelon has demonstrated that the record is barren of proof of the notice contemplated by the statute. He might have added that due to a geographical anomaly caused by playgrounds and off-set intersections, there are no less than six different locations which answered to the description, "corner of sixth and L Streets southeast" as the situs of the alleged defect. I agree otherwise with his observations except that I dissociate myself from the suggestion that the *McDonald* case was incorrectly decided. I think the *McDonald* result is commanded by the statute, and there are real reasons why that is so.

First is the need to protect against false or unjustified claims, for, unfortunately, there are some claimants who are strangers to the truth where a dollar is involved. So, Congress requires that the notice shall supply information as to the "approximate time, place, cause and circumstances" of the alleged injury. Next, as Congress says, the prescribed timely notice shall be given to the Commissioners even as to valid claims, for the District is entitled to a reasonable opportunity to prepare a proper defense to all claims valid or invalid. The courts shall not be open to a non-complying claimant unless the required information, *in writing*, shall be supplied
27 in behalf of the claimant or by the police "in regular course of duty." Under the circumstances, the statutory notice is by no means an "idle formality," as I read the Code and understand its purpose.

If Circuit Judge Washington's opinion is correct, it makes no difference whether the notice be given to the Highway Department,* or any other department, so long as the "District" or unnamed "officials of the District" learn, somehow, of the claim and the location of the area where a defect is said to exist. Circuit Judge Washington's opinion says that so long as the District can prepare its defense, it is "most unreasonable" to require a sufficient notice. Such reasoning would sustain any claim, whether in writing or not, no matter what the source of the District's information, no matter who in the District gets the information, no matter when the suit is brought. Such is the end result of the logic employed. I do not understand it to be our function to fix policy and to say what is "reasonable," be it more or less reasonable.

Congress has clearly and expressly spoken otherwise. The matter of an opportunity to prepare a defense is only *part* of the statutory scheme. Of course Congress knows that the District has a Corporation Counsel who defends lawsuits, but Congress did *not* authorize the filing of the prescribed notices with the Corporation Counsel. The *Commissioners* are the government of the District of Columbia. Congressional appropriations for the maintenance of the District are to be expended under the eye of the Commissioners. When notices are filed or police reports are submitted as the law requires, the Commissioners become charged with knowledge of the information so supplied. Since *Congress* has seen fit to
28 hold the *Commissioners* responsible, notice *to them* has been required that they, in turn, may perform their proper function of supervising, or of inquiring into, the work performance of those lesser officials whose duty

*In considering the problem, it should be realized that there are more than 3,000 miles of streets in the District of Columbia.

it is to keep in reasonably safe condition those areas of the District which the latter should maintain.

The *McDonald* rule may seem harsh when its effect has been to deny relief where some District officials from some source, have had actual knowledge of the location of the defect complained of and have not been misled by an inadequately or incorrectly directed claim. It seems to me that Congress might be asked to relax the rigors of its present statute by providing that *where the District has actual and timely notice of the circumstances out of which the claim arose and is sufficiently informed to prepare its proper defense,* no more need be demanded.

But, in my view, it does not lie properly within the power of the *court* to impose less burdensome conditions to be met than Congress has deemed should be met. The Congress has not said that the District may be liable for an injury if it has actual knowledge of the time, place and circumstances, regardless of the form of notice or where the claim is filed, or how the District may have acquired such knowledge. Since Congress has not said that much, the court should not say so. Does any one suggest that it is for us to say that the notice of claim may be filed in 24 months instead of the six months limited by the statute, or that claims for injuries due to snow and ice should realistically be filed within 10 days instead of six months?

We need not cite statutes in other jurisdictions where statutory notice requirements have been relaxed when actual notice is shown. I mention one, however, where the legislature, when confronted with the problem, amended its notice statute by adding the following:

> "No notice given under the provisions of this section shall be held invalid or insufficient
> 29 by reason of an inaccuracy in describing the injury, or in stating the time, place or cause of its occurrence if it shall appear that there was no intention to mislead or that such [munici-

pal corporation] . . . was not in fact misled thereby."[1]

It is not to be doubted that Congress will in the light of hardship cases consider the problem if brought to its notice. It might also think it wise to amend further to permit a special period, say of one year, within which in instances where it can be shown the District had actual knowledge, any action which accidentally failed to survive the *McDonald* case, might be revived and reopened, or might be brought if not previously commenced because of the *McDonald* ruling.

I have respectfully submitted the foregoing since such amendments will more nearly achieve complete justice than is possible under the statute as presently written. Rather than the court, I think *Congress* should pronounce the rule under which a remedy may be sought where the District's liability is limited by a section of our Code.

PRETTYMAN, *Circuit Judge*, dissenting: I agree with the opinion of my brother Danaher, but I am constrained to add some additional observations from my own point of view. I think *McDonald* was correctly decided by this court and *Stone* was correctly decided by the Municipal Court of Appeals. Judge Danaher joins me in this opinion.

Congress enacted a statute which reads:

"No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained, he, his agent, or attorney gave notice in writing to the commissioners of the District of Columbia of the approximate time, place, cause, and circumstances of such injury or damage: * * *."[1]

[1] See CONN. GEN. STAT. § 2126 (Rev. 1949).
[1] 47 STAT. 1370 (1933), D.C. CODE § 12-208 (1951).

The statute enacted by the Congress is a clear statute. It makes a simple requirement, involving no expense or technicality. The notice need not be entered upon any specified form. It need not be in any particular language. The statute does not require either the difficulty or the expense of a verification. It does not require the informant to make any investigation; he is required to state only that which he himself knows better than anyone else. No particular form of service is required; the notice must merely be given. A pencil, a scrap of paper, and an envelope and three-cent stamp are the only materials necessary. The claimant is permitted adequate time within which to give his notice—six months. He need not give the notice himself; his agent or attorney may do so. Examination of the many laws in the states upon this subject impresses upon the examiner that this was a well-drawn piece of legislation.

The requirement that the notice be given to the Commissioners of the District of Columbia is a reasonable one. The Government of the District of Columbia, like the government of any large municipality, is a complicated affair. It includes many departments, divisions and subdivisions. Its offices are scattered all over the District. Many claims for damages to person or property are made against it. At oral argument its counsel told us that after a heavy snowstorm claims will run over a hundred a day. These claims may relate to any one of a number of departments—not only to streets and highways but to garbage collection, hospitals, police, public buildings, schools, trees and parking, sewers, and other municipal activities. To be sure, the defense of governmental function ultimately defeats many of these claims, and many others are found without color or merit.
31 But the claims are made nevertheless and have to be investigated. Surely Congress has the right to

select and designate the officials whom it wishes to hold responsible for this municipal function. Moreover, when these claims are channeled initially into one central reception place, they can be distributed to the proper department or division according to the content of the claim. The Commissioners, the central and top authority, ought to be able to direct where and by whom a claim of damage is to be investigated. Congress made a perfectly proper requirement in that respect.

The requirement that the claimant give notice of the time, place and circumstances of the injury for which he claims damages is also a reasonable one from many points of view. After all, payment of these claims is from the public treasury, taxpayers' money, and city officials should be enabled to defend if defense is proper. Moreover, as Judge Pound of the Court of Appeals of New York said:[2]

> "The city is entitled to know, not alone where the accident in fact happened, but also where the injured person claims that it happened. The two points are not necessarily and invariably identical, and the rule requiring a particular location to be stated in the notice should not be greatly relaxed merely because the conjectures of the city officials as to its meaning prove accurate."

And, again, of course a reasonably accurate notice of time, place and circumstances greatly reduces the burden of a large city in investigating these many claims arising out of alleged defects in sidewalks.

In its present opinion this court* is enacting a
32 new statute. We think the court has no power to do so and, even if it had power, it should not do so.

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[2] *Casey* v. *City of New York*, 217 N.Y. 192, 111 N.E. 764 (1916).

*Judge Washington announces an opinion concurred in by two other judges, and Judge Bazelon, in a separate opinion with Chief Judge Edgerton concurring, agrees in so far as *McDonald* is concerned. We shall refer to the action indicated by the opinion of Judge Washington as the action of the court.

The court makes two fundamental changes in the requirements made by Congress. First, it selects the Corporation Counsel as the official to receive these notices. It does so because he has charge of all law business and suits instituted against the District Government. The court says: "To insist that the notice must be addressed to the Commissioners, and to rule out as insufficient a notice addressed to their Counsel, to whom Congress has delegated the responsibility for defending the District against suit, seems to us most unreasonable." The court disagrees with the Congress, and so the court changes the statute. It is of the view that these claims are law business or suits. Maybe they, or some of them, so develop. But surely there is no basic necessity that they be so considered in the initial stages. Insurance companies do not refer all claims to their legal offices; they have investigators and adjustors who take the first look at claims. Maybe the Commissioners of the District would like to conduct their business in some such fashion. Obviously Congress thought they should be able to do so.

The court refers to the provision of the District Code which gives the Corporation Counsel charge of "all law business" of the District.[3] That provision was last enacted in 1923,[4] ten years before the congressional enactment of the requirement that notice of claims be given the Commissioners.[5] Congress knew what duties the Corporation Counsel had when it prescribed that these
33 notices go to someone else. The court nullifies the function of the Commissioners to determine at what stage the claim need go to the Corporation Counsel.

The second fundamental change made in the statute by the court is in substituting a general doctrine of equity, non-prejudice, and acquired knowledge for plain and specific requirements. It holds the notice in *Stone* to be ade-

[3] D. C. CODE § 1-301 (1951).
[4] 42 STAT. 1488.
[5] Act of Feb. 28, 1933, *supra* note 1.

quate, because within two months after the accident the District had interviewed the witnesses to the accident, taken pictures, and discovered the right site—although, the court notes, it may be true the letter from plaintiff's counsel to the Corporation Counsel bore no causal relationship to these events,—and because plaintiff did not deliberately seek to mislead the District and the notice pin-pointed the locale with sufficient accuracy so that an investigation starting from the notice could reasonably be expected to uncover the available information. The court relies heavily upon the fact that the District did not affirmatively claim prejudice. We are not sure that the court requires any written notice. Certainly, instead of treating the notice provision as mandatory, as the other courts of the country do,[6] it treats it as a procedural incident.

To our minds the opinion of the court is a complete rewriting of the plain and simple requirements of the statute. We anticipate that every defective notice or absence of notice will be defended upon the ground that some notice given somehow to some official was sufficiently accurate so that an investigation thereof could reasonably be expected to uncover the available information. Nothing but chaos can result from the court's rewriting of this plain statute.

34 The problem is neither new nor novel. It appears from the reported cases that some thirty or more states have similar statutes, and courts of last resort have often dealt with the adequacy of the required notices. The cases are myriad. Through them run two clear rules. (1) The specific requirements of the statute must be met. (2) When the statute requires a description of the accident, *i.e.*, time, place, nature, etc., at least substantial compliance is required.

[6] The only exception I have found are a few cases of infancy or prolonged incapacity beyond the period allowed for the notice.

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One of the specific requirements in these state statutes is that a notice in writing must be given, and the courts hold that such a notice must be given in writing. All the courts, so far as we can ascertain, hold such a notice, when so required, to be mandatory and a condition precedent to suit. McQuillin [7] cites decisions from thirty states to support the proposition.[8] We have not found a case which holds an oral, informal notification to comply with such a statute.

Another of the specific requirements is that the notice must be given to or served upon the officer or officers named in the statute. Many cases are on the point.[9] McQuillin says: [10]

> "The notice must be given to or served upon the officer named by the law, not to or upon another officer. The policy of the law, it has been said, is to impose an unqualified duty upon the officer specified and not to clothe the injured person with discretionary power to select some other municipal officer to whom to give or serve with notice."

In New York the Court of Appeals held that where the statute required notice to counsel for the corporation notice to the Comptroller was not sufficient even though the latter officer sent the notice to the Corporation Counsel.[11] Again in New York the same court held that notice to the village clerk was not good where the statute required notice to the president or treasurer of the village. The court said: "It is not for the court to say that the

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[7] 18 McQUILLIN, MUNICIPAL CORPORATIONS § 53.154 (3d ed. 1950).

[8] See also, *e.g.*, *Bituminous Cas. Corp.* v. *City of Evansville, Indiana*, 191 F.2d 572 (7th Cir. 1951); *City of Louisville* v. *Verst*, 213 S.W.2d 517, 519 (Ky. 1948); *Rich* v. *City of Eastport*, 110 Me. 537, 87 Atl. 374 (1913).

[9] See, *e.g.*, WHITE, NEGLIGENCE OF MUNICIPAL CORPORATIONS § 694 (1920).

[10] 18 McQUILLIN, *op. cit. supra* note 7, § 53.160, citing cases from California, Colorado, Florida, Illinois, Massachusetts, Minnesota, New York, North Carolina, Tennessee and Texas.

[11] *Lewis* v. *City of New York*, 278 N.Y. 515, 15 N.E.2d 672 (1938).

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village officials had actual knowledge of the claims, that the failure to present them to the proper officer was unprejudicial to the defendant, or that technicalities should not be allowed to defeat a meritorious claim." [12] In Massachusetts the Supreme Judicial Court has repeatedly held that, where the statute provided for notice to one of the selectmen, the town clerk, or the treasurer, notice to the city solicitor is not good.[13]

In North Carolina a notice addressed to the Mayor and City Council, as required by statute, was held effective when handed to the City Manager and by him handed to the Council,[14] but a notice addressed to the
36 City Manager was held invalid.[15]

In Illinois the statute required notice to the city attorney and the city clerk. A claim was filed with the city council by an alderman on behalf of the claimant and was thereupon endorsed by the city clerk and the corporation counsel. The notice was held invalid.[16] In Texas the court held that, where the statute required filing with the city commission, notice to the city clerk was not sufficient.[17] In Colorado a notice served on the city clerk was held to be an insufficient compliance with the statute which required notice to the mayor.[18] In Tennessee the statute required notice to be served on the mayor. Service on the city attorney was held invalid.[19] In Maine a statute required notice to the mayor or alderman. Notice to the city clerk was held fatally defective.[20] In Minne-

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[12] *Rogers* v. *Village of Port Chester*, 234 N.Y. 182, 137 N.E. 19 (1922).
[13] *O'Connell* v. *City of Cambridge*, 258 Mass. 203, 154 N.E. 760 (1927); *Merrill* v. *City of Springfield*, 284 Mass. 260, 187 N.E. 551 (1933); *King* v. *City of Boston*, 300 Mass. 377, 15 N.E.2d 191 (1938); *Brown* v. *Town of Winthrop*, 275 Mass. 43, 175 N.E. 50 (1931).
[14] *Perry* v. *City of High Point*, 218 N.C. 714, 12 S.E.2d 275 (1940).
[15] *Nevins* v. *City of Lexington*, 212 N.C. 616, 194 S.E. 293 (1937).
[16] *McCarthy* v. *City of Chicago*, 312 Ill.App. 268, 38 N.E. 2d 519 (1941).
[17] *City of Beaumont* v. *Baker*, 95 S.W.2d 1365 (Civ. App. Tex. 1936).
[18] *Fisher* v. *City and County of Denver*, 123 Colo. 158, 225 P.2d 828 (1950).
[19] *Gilkey* v. *City of Memphis*, 159 Tenn. 220, 17 S.W.2d 4 (1929).
[20] *Huntington* v. *City of Calais*, 105 Me. 144, 73 Atl. 829 (1909).

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sota, where the statute required notice to be presented to the city council, notice served on the secretary or clerk to the mayor was held invalid.[21]

In Wisconsin service on the mayor and city clerk was held "necessarily fatal" where the statute required service on the street commissioner, sidewalk superin-
37 tendent, or alderman of the ward where the accident happened.[22] In Florida a telephoned notice was given to the town clerk, who referred the caller to the town's insurance carrier. The town charter required notice to the Town Attorney. The Supreme Court of Florida, in 1952, held the notice invalid.[23] In Iowa the statute required a notice to "the defendant". A claimant sued the City of Waterloo. Its notice was addressed to "Charles MacKay, City Clerk." The Supreme Court of Iowa held the notice insufficient.[24]

Mr. Justice Cardozo, while Chief Judge of the Court of Appeals of New York, wrote:[25]

> "The Legislature has said that a particular form of notice, conveyed with particular details to particular public officers, shall be a prerequisite to the right to sue. The courts are without power to substitute something else."

Sometimes a problem arises where the statute requires notice to a named official, such as the mayor, and service is acknowledged in his name by a lesser official, such as his secretary or clerk. In at least two cases in Missouri such service was held sufficient,[26] and rightly so, we

[21] *Aronson* v. *City of St. Paul*, 193 Minn. 34, 257 N.W. 662 (1934).
[22] *Harris* v. *City of Fond Du Lac*, 104 Wis. 44, 80 N.W. 66 (1899).
[23] *Town of Miami Springs* v. *Lasseter*, 60 So. 2d 774 (1952).
[24] *Barton* v. *City of Waterloo*, 218 Iowa 495, 255 N. W. 700 (1934).
[25] *Thomann* v. *City of Rochester*, 256 N.Y. 165, 172, 176 N.E. 129, 131 (1931).
[26] *Peterson* v. *Kansas City*, 324 Mo. 434, 23 S.W.2d 1045 (1929); *Callahan* v. *Kansas City*, 226 Mo.Ap. 408, 41 S.W. 2d 894 (1931).

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think. And another problem sometimes arises where the statute requires notice to an official body, such as
38 the council or a commission, and service is made on one member of the body and by him presented to the body. At least one Texas case holds such service good,[27] and we would agree with that holding. Sometimes a problem arises when a statute requires notice be given to a certain official and it is actually given to another, who then gives it to the official named in the statute. Some courts, but not all, hold the statute satisfied. We do not have that question here, because it is not suggested that the notices in these cases ever reached the Commissioners.

Problems also arise where the claimant is lulled into security by some act of the municipal authorities, such as where the claimant was wrongly advised by an official or where some defect in a notice is expressly waived by the municipality. The courts are in conflict as to whether defects can be expressly waived.[28] But we do not have that problem here. Even if it were held that the Commissioners could waive a congressional prescription, nothing in these records suggests the Commissioners ever made such waivers.

The philosophy of the courts is that the legislature has power to name the municipal officials upon whom responsibility for protecting the public treasury against claims shall be placed, and to name the requisites for suit against a municipality. We have not found a case which holds valid a notice served upon or given to an official other than one named in the statute and not shown to have

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[27] *Jones* v. *City of Fort Worth*, 267 S.W. 681 (Comm.App. Tex. 1924), 270 S.W. 1002 (Comm.App.Tex. 1925). See also *McLendon* v. *City of Houston*, 267 S.W.2d 805 (Sup. Ct. Tex. 1954).

[28] White says flatly: "The mayor or other officers of a city have no power, unless expressly granted, to waive the statutory requirements as to the giving of such notice." WHITE, *op. cit. supra* note 9, § 673.

been duly transmitted to the official so named. The
39 case at bar would seem to be the first such case.[29]

We come, then, to the established rules as to the description of the time, place and circumstances of an accident when such a description is required in a notice. Some states are quite rigorous in that regard, holding that the statute must be read literally and strictly. But other courts hold that substantial compliance is sufficient in respect to the contents of an otherwise valid notice. The Supreme Court of Tennessee, in 1941, was of the view that a rule of strict construction is supported by the weight of authority in the United States.[30] However that may be, for present purposes we will test the notices before us by the more liberal rule of substantial compliance.

McQuillin[31] states the "substantial compliance doctrine", that is, that these statutes, providing for notice to municipalities, require only substantial compliance. He cites cases from many states. I have read at least one case from every state he mentions. All dealt with either (1) the particularity with which the time, place, nature or cause of the accident is described in the notice or (2) some trivial variation in the service. Examples of the latter are: The original signed notice was shown to and receipted for by the proper officials, but an unsigned copy was left with each. The claim was made that
40 the signed copy was not "served".[32] A complete notice was mailed as a letter; again the claim was that it was not "served".[33] Notice was complete in all respects, including the amount of the damages, but the

[29] *Powers* v. *City of Boulder*, 54 Colo. 558, 131 Pac. 395 (1913), appears so to hold, but in a later case, *Fisher* v. *City and County of Denver*, 123 Colo. 158, 225 P.2d 828 (1950), the same court (Supreme Court of Colorado) held that in Powers the notice was actually given to the city clerk, as required by the statute, by the mayor to whom it was first given.
[30] *Gidcome* v. *City of Nashville*, 177 Tenn. 295, 145 S.W. 2d 1029 (1941).
[31] 18 McQUILLIN § 53.163.
[32] *Lutsch* v. *City of Chicago*, 318 Ill.App. 156, 47 N.E.2d 545 (1943).
[33] *Inlagen* v. *Town of Gary*, 34 S.D. 198, 147 N.W. 965 (1914).

amount claimed was not specified. The notice was held good.[34] The statute required the notice to give the "address of the claimant." A notice gave the address of the claimant's attorney. It was held good.[35] Thus, so far as the cases cited by McQuillin are concerned, the substantial compliance doctrine relates only to the description of the time, place and circumstances of the accident or to some trivial technical objection to form. It does not embrace compliance with explicit directions of the statute. The substantial compliance doctrine is not expanded to a ruling that, if municipal officers have adequate knowledge of the affair, specific requirements of the statute may be omitted.

The cases hold that the fact that city officials may acquire full knowledge of the facts about the accident does not dispense with the notice required by statute. In other words a notice sufficient in itself must be given to the proper officials, regardless of what information the city may have received from other sources. Thus the fact that the mayor was one of the first people on the scene of an accident was held ineffective in North Carolina;[36] the fact that the newspapers carried full accounts
41 of an accident was ineffective in Indiana;[37] and the fact that suit was filed, and full information given, within the statutory period for notice was held ineffective in Missouri.[38] The Supreme Judicial Court of Maine observed: "The knowledge of the municipal officers is immaterial. The written statutory notice is an indispensable prerequisite to the right to maintain a suit."[39]

The Court of Appeals of Kentucky held that a letter from the city law department, describing the accident in

[34] *Bowman* v. *City of Davenport*, 243 Iowa 1135, 53 N.W. 2d 249 (1952).
[35] *Stewart* v. *City of Rio Vista*, 72 Cal. App. 2d 279, 164 P.2d 274 (1945).
[36] *Pender* v. *City of Salisbury*, 160 N.C. 363, 76 S.E. 228 (1912).
[37] *Touchey* v. *City of Decatur*, 175 Ind. 98, 93 N.E. 540 (1911).
[38] *Cole* v. *City of St. Joseph*, 50 S.W. 2d 623 (Sup.Ct.Mo. 1932).
[39] *Rich* v. *City of Eastport*, 110 Me. 537, 87 Atl. 374 (1913).

full, could not supply the defect of a notice served by the claimant which failed to give the character and circumstances of the injury.[40] The same court said in 1952, "Moreover, the City's actual or constructive notice of the defect in the thoroughfare is not a substitute for notice."[41] The court went on: "From a reading of the notice, one cannot tell how the injuries were received. It is not stated whether the accident occurred in the street or on the sidewalk or at the curb. Moreover, the alleged defect in the thoroughfare is not set out." That court held the notice invalid.

In Illinois, within the statutory period, investigators obtained a full statement from a claimant, which was served upon and available to the Secretary and General Attorney of the Transit Authority. The statute required written notice signed by the claimant. The lack of such a notice was held fatal. The court observed that it was common knowledge that the city investigates acci-
42 dents but that a claimant was not thereby relieved from giving notice.[42]

Among the states listed by McQuillin as adhering to the substantial compliance doctrine are Alabama, Connecticut, Illinois, Indiana, Iowa, Michigan, New York, Rhode Island, Tennessee and Wisconsin. A look at a few cases in those states will demonstrate how the doctrine is applied.

In Alabama a notice said the accident occurred on Forty-Ninth street, between Tenth and Eleventh avenues. In fact it occurred on Forty-Ninth street between Ninth and Tenth avenues. The notice was held fatally defec-

[40] *Treitz* v. *City of Louisville*, 292 Ky. 654, 167 S.W. 2d 860 (1943).
[41] *Berry* v. *City of Louisville*, 249 S.W. 2d 818 (1952).
[42] *Hayes* v. *Chicago Transit Authority*, 340 Ill.App. 375, 92 N.E.2d 174 (1950). To the same effect are *Schwartz* v. *City of New York*, 250 N.Y. 332, 165 N.E. 517 (1929); *Benson* v. *City of Madison*, 101 Wis. 312, 77 N.W. 161 (1898); *McComb* v. *City of Chicago*, 263 Ill. 510, 105 N.E. 294 (1914); *Keller* v. *Tomaska*, 299 Ill.App. 34, 19 N.E.2d 442 (1939); *Johnson* v. *City of Chisholm*, 222 Minn. 179, 24 N.W.2d 232 (1946).

tive.[43] In Connecticut the court held[44] that, although a notice stated the fact of the accident, failure to describe the injury was not an inaccuracy but a fatal defect. Again in Connecticut a notice which said that claimant, while walking along a certain street near a certain intersection, fell into a hole, was fatally defective, because there were many holes in the street in that neighborhood.[45]

In Indiana a notice said the accident happened in front of 426 South Meridian Street. It actually occurred
43 in front of 458 South Meridian. The notice was held defective.[46] In Illinois a notice which was in error by a quarter of a mile as to the place of an accident was held fatally defective, although another person hurt in the same accident timely filed an accurate notice as the basis for his separate claim.[47] In Iowa a notice which stated the time of the accident to have been "on the evening of March 22d"—omitting the year—was held fatally defective, the court citing many cases.[48] In Michigan a notice said claimant stumbled over a break in the sidewalk. In court she showed her foot became wedged, as in a trap, under a raised piece of concrete. The notice was held fatally defective.[49]

In New York a notice gave the date of an accident as August 20, 1912. In fact it occurred on August 28th. The notice was held not to be in substantial compliance.[50] And again in New York a notice which said the accident happened at about Washington street near Vestry street

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[43] *Brannon* v. *City of Birmingham*, 177 Ala. 419, 59 So. 63 (1912).
[44] *Marino* v. *Town of East Haven*, 120 Conn. 577, 182 Atl. 225 (1935).
[45] *Schaap* v. *City of Meriden*, 139 Conn. 254, 93 A.2d 152 (1952).
[46] *Atkinson* v. *City of Indianapolis*, 101 Ind.App. 620, 199 N.E. 157 (1936).
[47] *Keller* v. *Tomaska*, 299 Ill.App. 34, 19 N.E.2d 442 (1939).
[48] *Luke* v. *City of Keokuk*, 202 Iowa 1123, 211 N.W. 583 (1926).
[49] *Rottschafer* v. *City of East Grand Rapids*, 342 Mich. 43, 69 N.W.2d 193 (1955).
[50] *Weisman* v. *City of New York*, 219 N.Y. 178, 114 N.E. 70 (1916).

was held fatally defective, although the city officials found the place and were not misled.[51]

In Rhode Island a notice said the cause of injury was slipping on ice, snow and water. In fact the claimant stepped in a hole in the sidewalk. The notice was
44 held defective.[52] In Tennessee a notice in error by ten days was held fatally defective.[53] And in Wisconsin a notice said the crosswalk at a certain intersection had been torn up and loose stones left lying about, and that boards of the sidewalk projected above the level of the street. At trial the claimant relied upon the absence of an apron over the gutter at the designated intersection, which left a step-down. The Supreme Court of the state recited that it had been very liberal in upholding such notices, "But there is a limit beyond which we cannot pass."[54] It held the notice fatally defective.[55]

The sum total of the rule, as I have found it, is well stated by the Appellate Court of Indiana in *City of East Chicago* v. *Gilbert*.[56] It has been stated in similar
45 fashion by the courts of last resort in Kentucky and Virginia.[57] The Indiana court said:

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[51] *Casey* v. *City of New York*, 217 N.Y. 192, 111 N.E. 764 (1916).

[52] *Lane* v. *Gray*, 50 R.I. 486, 149 Atl. 593 (1930).

[53] *City of Knoxville* v. *Felding*, 153 Tenn. 586, 285 S.W. 47 (1926).

[54] *Benson* v. *City of Madison*, 101 Wis. 312, 77 N.W. 161 (1898).

[55] A number of cases illustrate the method of testing the sufficiency of a notice as to place under the rule of substantial compliance. The court looks first to the information contained in the notice. It then sets this information against the actual conditions existing at the place of the injury. If it is determined that an official of the city, guided by the notice alone, could go to the place specified and reasonably discover the correct site in light of the actual conditions found there, the notice will be deemed sufficient. See *City of East Chicago* v. *Gilbert*, 59 Ind.App. 613, 108 N.E. 29 (1915); *City of Gary* v. *Wilson*, 103 Ind.App. 376, 8 N.E. 2d 109 (1937); *Nagle* v. *City of Billings*, 80 Mont. 278, 260 Pac. 717 (1927); *Denecke* v. *Property Collaterals*, 279 N.Y. 105, 17 N.E.2d 787 (1938).

[56] 59 Ind.App. 613, 621, 108 N.E. 29, 32 (1915), quoted in *Volk* v. *Michigan City*, 109 Ind.App. 70, 32 N.E.2d 724, 725 (1941). See also *City of Gary* v. *McNulty*, 99 Ind. App. 641, 194 N.E. 193 (1935).

[57] *City of Louisville* v. *Verst*, 308 Ky. 46, 213 S.W.2d 517, 519 (1948); *Bowles* v. *City of Richmond*, 147 Va. 720, 133 S.E. 593 (1926).

> "* * * in so far as concerns the requirement that the notice be given, and within the time specified, and to the proper officers, the statute is strictly construed. [Citing cases.] But on the question of whether or not a notice in fact given is sufficiently definite as to the time, place, nature, etc., of the injury, the rule of liberal construction is generally adopted by the courts."

We come now to the cases before us. In *McDonald* the notice given the Commissioners pursuant to the statute gave the place of the accident as 14th and V Streets, Northwest. The District of Columbia is divided into four sectors. There are three 14th and V intersections in the city. The one in the northwest sector is some five miles or more from the one in the southeast sector where the accident really happened. The cause of the accident was an alleged defect in a sidewalk. Officials of the city could have searched until they dropped, and they would not have found the defect in the neighborhood of the place given in the notice. In our judgment such a notice would not fall within the permissible bounds of any state court decision upholding even the substantial compliance doctrine. An error of miles in locating a defect in a sidewalk is not substantial compliance with a statute requiring notice of the place of an accident.

The correct location of the accident in *McDonald* was given verbally to an assistant corporation counsel. It was not in writing, was not given to the Commissioners, and, so far as the record shows, never reached them or any of them. In our view it was totally defective.

In the *Stone* case—omitting from the discussion the police notation—no notice in writing was given the
46 Commissioners. It was given to the Corporation Counsel. That fact alone made it fatally defective. It was not shown that the notice ever reached the Commissioners or any of them. As a matter of fact appellant

Stone stated flatly in his brief in this court: "Appellant does not make any claim that his attorney's letter constituted notice to the Board of Commissioners." Despite that disclaimer this court now holds that letter to have been a validly effective notice to the Commissioners.

In *Stone* the only thing in the record about the notice is in a pre-trial stipulation.[58] In full text the stipulation as to notice is:

> "The District of Columbia received a letter from Foster Wood, attorney for plaintiff, addressed to the 'Corporation Council' under date of April 30, 1953, setting forth that the plaintiff was injured April 15, at the northwest corner of sixth and L Streets, southeast."

The foregoing is all the record contains as to the notice. That is the notice we are considering. The court holds such a notice to be a valid compliance with the statute.

Our statute requires that the notice state "the approximate time, place, cause, and circumstances of such injury or damage". This notice, as we have it before us, did not state any circumstances—whether claimant was walking or driving, whether he was hit by a truck, fell into a hole, slipped on a wet spot, fell over a barrier, or tripped on a sidewalk defect, whether the sidewalk or the parking or the street was torn up, or any other circumstance whatever. The notice does not describe any injury or damage. It does not say whether claimant bumped his head, broke his leg, injured his back, or merely cut his finger. It does not give any cause of the injury—whether a defect in a sidewalk, a defective
47 manhole cover, negligent driving of a city truck, loose stones, improper lighting over repair work, or any other cause whatever. The notice does not give any

[58] Technically the stipulated description of the notice is contained in an agreed motion to amend the pretrial order.

approximate time—either an hour or whether morning, afternoon, evening or nighttime; it gives only a date. It does not give an approximate place (even assuming the statute requires only the "approximate" place, a disputed point [59]). It gives only a corner at an intersection, and an irregular intersection at that, but not whether on the sidewalk, in the street, on a crosswalk, or in a tree space. The corner of Sixth and L Streets, Southeast, is not a square, four-corner intersection. It is an irregular intersection, at which Sixth Street, going north, comes to a dead end at L Street, then shifts to the east some 200 feet, and there resumes its way north. Even such location as was given in the notice was not correct; the notice said the northwest corner, whereas the proof was the northeast corner.

In our opinion this notice, as we have it on this record was defective in every important respect in the substance of what the statute required. The court holds such a notice to be valid in this jurisdiction. No other court decision that we have been able to find would support such a holding on such a notice.

In our opinion the statute enacted by the Congress is clear, simple, specific, and based upon sound reasoning and ample authority. It prescribes a mandatory prerequisite to suits against the District of Columbia for injuries or damage. The notices given in the *McDonald* and *Stone* cases were patently insufficient. The decision of this court holding them to be valid is erroneous, in our judgment. The court cites no authority in support of its view. We think there is none. There are dozens of cases to the contrary.

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[59] *District of Columbia* v. *Stone*, 112 A.2d 497 (Mun. Ct.App. D.C. 1955).

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48 No. 12,638 April Term, 1956

M.C.A. 1603

VENSTONE STONE, *Appellant,*

v.

DISTRICT OF COLUMBIA, *Appellee.*

Filed June 28, 1956

Appeal from the Municipal Court of Appeals for the District of Columbia.

Before: Edgerton, Chief Judge, and Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher and Bastian, Circuit Judges, sitting in banc. (Circuit Judge Burger took office after this case was heard and took no part in its consideration and decision.)

JUDGMENT

This cause came on to be reheard before the Court in banc on the record from the Municipal Court of Appeals for the District of Columbia, and was reargued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment of the said Municipal Court of Appeals appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and the same is hereby, remanded to the said Municipal Court of Appeals for further proceedings consistent with the judgment of this Court.

It is further ORDERED by the Court that appellant herein recover from appellee his taxable costs on this appeal and have execution therefor.

Dated: June 28, 1956.

Per Curiam.

Circuit Judge Washington announced the judgment of this Court reversing the judgment of the Municipal Court of Appeals, and filed an opinion in which Circuit Judges Wilbur K. Miller and Bastian join. Circuit Judges Edger-

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ton and Fahy agree that the judgment of the Municipal Court of Appeals should be reversed.

Separate opinion by Circuit Judge Bazelon setting forth the reasons for his view that the appeal should be dismissed as having been improvidently granted.

Separate dissenting opinion by Circuit Judge Danaher, with which Circuit Judge Prettyman agrees.

Separate dissenting opinion by Circuit Judge Prettyman, in which Circuit Judge Danaher joins.

* * * * * * * * * *

51 UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages, numbered 1 to 50, both inclusive, constitute a true copy of the Joint Appendix to the briefs and of the record and proceedings in the said Court of Appeals, as designated by counsel for appellee, in the case of:

VENSTONE STONE, *Appellant,*

v.

DISTRICT OF COLUMBIA, *Appellee.*

No. 12,638, April Term, 1956, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this eighteenth day of July, A. D. 1956.

[SEAL]

JOSEPH W. STEWART
Clerk of the United States Court of Appeals for the District of Columbia Circuit.

APPENDIX B

10 THE MUNICIPAL COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 1603

DISTRICT OF COLUMBIA, a municipal corporation, APPELLANT,

v.

VENSTONE STONE, APPELLEE.

Appeal from The Municipal Court for the
District of Columbia,
Civil Division.

(Argued February 14, 1955 Decided March 14, 1955)

* * * * * * * * * *

Before CAYTON, Chief Judge, and HOOD and QUINN, Associate Judges.

QUINN, *Associate Judge:* Appellant, the District of Columbia, appeals from an adverse verdict and judgment for damages for personal injuries sustained by appellee Stone. The appellant contends that the trial court erred in denying its motion for a directed verdict at the close of plaintiff's case on the ground that the notice given by appellee was not legally sufficient to meet the requirements of the District statute which provides:

> "No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained,

> he, his agent, or attorney gave notice in writing to the commissioners of the District of Columbia of the approximate time, place, cause, and
> 11 circumstances of such injury or damage: *Provided, however,* That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision." [1]

The complaint alleged that the accident occurred "near the corner of 6th and L Streets, Southeast." The evidence at trial disclosed the following facts: Appellee, while on his way to work on the morning of April 15, 1953, stepped on the edge of a manhole cover located at the northeast corner of 6th and L Streets, S. E. The manhole cover, projecting above ground level, caused the appellee to fall injuring himself. On April 30, 1953, appellee's attorney sent a letter to the *corporation counsel* giving notice of the injury and stating that the accident occurred on the *northwest* corner of 6th and L Streets, S. E.

It must be conceded that this notice was fatally defective inasmuch as the statute is clear and unambiguous in its mandate that the giving of notice must be "in writing to the commissioners of the District of Columbia." [2]

In this case, however, evidence was introduced to the effect that appellee made a verbal report of the accident to the Metropolitan police department, which in turn submitted a written report of the accident in the regular course of duty. Counsel for appellee admits that his client informed the police officer that he fell on the *southeast* corner of the intersection, whereas, in fact, the evidence disclosed that the accident occurred on the northeast corner.

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[1] Code 1951, 12-208.
[2] Code 1951, 12-208, supra.

The intersection of 6th and L Streets, S. E., is not a typical four-corner intersection. Rather, it is different in that 6th Street, which runs north and south, upon meeting L Street, which runs east and west, does not continue directly north. In order to continue north on 6th Street it is necessary to proceed in an easterly direction on L Street approximately 200 feet. Thus the northeast and northwest corners of 6th and L Streets, S. E., are approximately 200 feet east of the southeast and southwest corners.

It appears from the record that there is more than one manhole cover at this intersection and that an agent of the District Government, in conducting his investigation, inspected a manhole cover other than the one on the northeast corner. Therefore, the question before this court is whether the information in the police report specifying the "place" of the accident was sufficiently accurate to fulfill the statutory requirements. We hold that it was not.

Looking to the legislative history of this statute, we find the following language in the report of the committee submitting the bill for approval:

> "It was thought also that an approximate estimate of the time of the accident should be sufficient and the word 'approximate' was therefore inserted in the bill. Witnesses appearing for the District stated that a general description of the place would be inadequate as the actual conditions at the particular place must be inspected so the word 'place' was left as in the original draft of the bill." [3]

It is therefore clear that the intent of Congress was to require a claimant to be precise and accurate in his de-

[3] H. R. Rep. No. 2010, 72d Cong., 2d Sess. (1933).

scription of the place of the accident. In effect, to be legally sufficient the notice must contain a description of the place so definite as to enable the interested parties to identify it from the notice itself.[4] This was not the case here as the police report, on the basis of the erroneous information supplied by appellee, placed the scene of the accident on the southeast corner, whereas the accident occurred on the northeast corner, approximately 200 feet east and 60 feet north.

In *Hurd* v. *District of Columbia,* D. C. Mun. App. 106 A. 2d 702, 82 W. L. R. 1116, this court adopted the language used in *Cook* v. *City of Topeka,* 75 Kan. 534, 90 Pac. 244, 245, that "* * * with respect to the details of the statement precise exactness is not absolutely essential. If it reasonably comply with the statute, and the city is not misled to its prejudice by any defects of description of the place where the accident happened, it has no reason to complain."

However, in the recent case of *McDonald* v. *District of Columbia,* .... U. S. App. D. C. ...., ... F. 2d ...., the United States Court of Appeals for the District of Columbia Circuit on February 10, 1955, held that
13 the statute is "specific in the details of its requirements" and that "courts are not at liberty to construe the statute other than according to its terms, or to depart from its clear requirements," that the question of whether the District of Columbia is prejudiced as a result of any defect in the description of the place of the accident is immaterial, and that in order for a claimant to exercise his right of recovery, there must be strict compliance with the terms of the statute. That decision requires that the judgment in this case be reversed with directions to enter judgment in favor of the District of Columbia.

Reversed.

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[4] *Barribeau* v. *City of Detroit,* 147 Mich. 119, 110 N. W. 512.

* * * * * * *

14 No. 1603

DISTRICT OF COLUMBIA, a municipal corporation, APPELLANT,

v.

VENSTONE STONE, APPELLEE.

Before CAYTON, Chief Judge, and HOOD and QUINN, Associate Judges.

ON MOTION FOR REHEARING

April 5, 1955

QUINN, *Associate Judge:* This case is now before us on appellee's motion for rehearing and modification of its opinion dated March 14, 1955. In the said motion appellee makes several contentions but only one requires comment. He contends that there is no support in the record for the statement on page 2, paragraph 3 of the opinion where this court stated, "Counsel for appellee admits that his client informed the police officer that he fell on the southeast corner of the intersection, whereas, in fact, the evidence disclosed that the accident occurred on the northeast corner." In appellee's brief, page 2, paragraph 1, there is the following statement: "A police report was also made, in which the police questioned the appellee. The appellee stating the wrong corner of the intersection." This statement, read in connection with that portion of the police report quoted in the transcript, constituted the admission to which our opinion is referred. The motion for rehearing is denied.

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APPENDIX C

* * * * * * * * * * *

2 IN THE MUNICIPAL COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. M. 9706-54

VENSTONE STONE, 530 M Street, S. E., *Plaintiff*,

v.

DISTRICT OF COLUMBIA, *Defendants*.

COMPLAINT

DAMAGES — NEGLIGENCE

The plaintiff, Venstone Stone, sues the defendant, District of Columbia, for that, on to-wit the 15th day of April, 1953, plaintiff was walking on the sidewalk near the corner of 6th and L Streets, Southeast, in the District of Columbia.

That at the time and place aforesaid the defendant negligently maintained a man-hole and cover in a condition, wherein the cover to said man-hole protruded from the pavement level; that plaintiff stepped and walked upon and onto said man-hole cover; that due to the said cover protruding from the ground level, plaintiff's ankle was caused to turn, by reason of all which, plaintiff's ankle was sprained and plaintiff suffered severe pain and mental anguish for a long period of time and plaintiff was required to expend large sums of money for medical care and treatment in to-wit the sum of One

Hundred Dollars ($100.00); and plaintiff was unable to work for a long period of time, 30 days, with a consequent loss of earnings of $250.00, all to the damage of plaintiff in the sum of Three Thousand Dollars ($3,000.00). That on to-wit the 30th day of April, 1953, plaintiff notified the Commissioners of the District of Columbia, in writing of the claim herein set forth.

WHEREFORE, plaintiff sues the defendant for Three Thousand Dollars ($3,000.00) and costs.

Plaintiff demands a jury trial.

* * * * * * *

3 ANSWER OF DEFENDANT DISTRICT OF COLUMBIA TO COMPLAINT

First Defense

The complaint fails to state a claim against the District of Columbia upon which relief can be granted.

Second Defense

Defendant, District of Columbia denies any allegations of negligence pertaining to it as contained in the complaint and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the complaint.

Third Defense

If the plaintiff suffered injuries as alleged in the complaint such injuries resulted from the sole or contributory negligence of plaintiff.

* * * * * * *

4 MOTION FOR SUMMARY JUDGMENT

The defendant moves the Court to enter summary judgment in its favor on the ground that the com-

plaint, when co
position of plai
issue as to any when considered with the pretrial order and de-
entitled to judgm of plaintiff demonstrates that there is no genuine
• • s to any material fact and that the defendant is
to judgment as a matter of law.

5 P(

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POLICE REPORT AS READ

years of age, • • "Venstone Stone, colored, thirty-one (31)
6:35 a.m. on A f age, 630 'M' Street, S. E., reports at about
walk on the n. on April 15, 1953, while walking on the side-
S. E." • • • the southeast corner of 6th and L Streets,

6 RULIN • •

RULING ON MOTION FOR SUMMARY JUDGMENT

"I think the
as far as the nk the police report takes care of any deficiency
Counsel is co s the notice of the plaintiff to the Corporation
is concerned is concerned, and, certainly insofar as location
set forth in t ned substantial compliance with the statute is
ner of Sixth in the Complaint which alleges 'near the cor-
exact side or ixth and L Streets, S. E.' It does not say any
believe the sle or corner of the intersection and I do not
extent" he statute was meant to be stretched to that

• •

9 CHAM • • • • • •

AMBERS OF JUDGE JOHN J. MALLOY

VENSTONE STONE, *Plaintiff*,

DISTRICT v.

ICT OF COLUMBIA, A Municipal Corporation,
Defendant.

No. M 9706-54

Foster Wo Wood, Esq., 416 Fifth St., N. W., Washington
D. C., Attorn rney for plaintiff.

Carlos L. Gartrell, Esq., Assistant Corporation Counsel, Washington, D. C., Attorney for defendant.

Dear Sir:

In the above entitled case, you are informed that defendant's Motion for Judgment non Obstante Veredicto, or, in the Alternative, for a New Trial, denied.

This will appear on record as of December 14, 1954.

/s/ John J. Malloy
JUDGE

December 8, 1954